

CHAPTER 33-16-01.1 PRETREATMENT REGULATIONS

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33-16-01.1-01. Definitions. The definitions in section 33-16-01-01 apply to this chapter unless defined differently below.

1. "Approval authority" means the department.
2. "Bypass" means the intentional diversion of wastestreams from any portion of an industrial user's treatment facility.
3. "Categorical industrial user" means an industrial user that is subject to a pretreatment standard for an industry category.
4. "Control authority" means either:
 - a. The publicly owned treatment works, if the publicly owned treatment works which receives the indirect discharge administers an approved pretreatment program in accordance with sections 33-16-01.1-06 and 33-16-01.1-08; or

- b. The department, if the publicly owned treatment works which receives the indirect discharge does not administer an approved pretreatment program in accordance with sections 33-16-01.1-06 and 33-16-01.1-08.
- 5. "Director" means the department.
- 6. "Indirect discharge" means the introduction of pollutants into a publicly owned treatment works from any nondomestic source regulated under section 307(b),(c), or (d) of the Federal Water Pollution Control Act.
- 7. "Industrial user" or "user" means a source of indirect discharge.
- 8. "Interference" means an indirect discharge which, alone or in conjunction with any other indirect discharges, both:
 - a. Inhibits or disrupts the publicly owned treatment works processes or operations, or its sludge processes, use, or disposal; and
 - b. Causes a violation of any requirement of the publicly owned treatment works North Dakota pollutant discharge elimination system permit, including an increase in the magnitude or duration of a violation or prevents sewage sludge use or disposal in compliance with federal or state law or statute.
- 9. "New source" means:
 - a. Any building, structure, facility, or installation for which construction commenced after the publication of proposed pretreatment standards which will apply to such source after promulgation, from which there is or may be an indirect discharge, provided that:
 - (1) The building, structure, facility, or installation is constructed at a site at which no other source is located;
 - (2) The building, structure, facility, or installation totally replaces the process or production equipment that causes the indirect discharge at an existing source; or
 - (3) The production or wastewater generating processes of the building, structure, facility, or installation is substantially independent of an existing source at the same site.
 - b. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of paragraphs 2 and 3 of subdivision a,

but otherwise alters, replaces, or adds to existing process or production equipment.

- c. Construction of a new source as defined under this subsection has commenced if the owner or operator has undertaken any of the following:
 - (1) Begun, or caused to begin, as part of a continuous onsite construction program:
 - (a) Any placement, assembly, or installation of facilities or equipment; or
 - (b) Significant site preparation work which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
 - (2) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation.
- 10. "Passthrough" means an indirect discharge which exits the publicly owned treatment works into waters of the state in quantities or concentrations which, alone or in conjunction with any other discharges, cause a violation of the publicly owned treatment works North Dakota pollutant discharge elimination system permit, including an increase in the magnitude or duration of a violation.
- 11. "Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a publicly owned treatment works.
- 12. "Pretreatment requirements" means any substantive or procedural requirement related to pretreatment, other than a pretreatment standard, imposed on an industrial user.
- 13. "Pretreatment standards" means any regulation which applies to industrial users that contains pollutant discharge limits promulgated by the environmental protection agency in accordance with the Federal Water Pollution Control Act, including prohibitive discharge limits established pursuant to section 33-16-01.1-02.
- 14. "Publicly owned treatment works" means a treatment works as defined by section 212 of the Federal Water Pollution Control Act, which is owned by a state or municipality, including any devices or systems

used in the storage, treatment, recycling, and reclamation of municipal sewage or liquid industrial wastes, as well as sewers, pipes, and other conveyances that convey wastewater to a publicly owned treatment works treatment plant. This term also means the municipality that has jurisdiction over the indirect discharges to and the discharges from the treatment works.

15. "Publicly owned treatment works treatment plant" means that portion of the publicly owned treatment works which is designed to provide treatment of municipal sewage and industrial waste.
16. "Severe property damage" means substantial physical damage to property, damage to treatment facilities which renders them inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. It does not mean economic loss caused by delays in production.
17. "Significant industrial user" means:
 - a. All industrial users subject to categorical pretreatment standards under sections 33-16-01-31 and 33-16-01.1-04; and
 - b. Any other industrial user that meets at least one of the following criteria:
 - (1) Discharges an average of twenty-five thousand gallons [94635 liters] per day or more of process wastewater to the publicly owned treatment works, excluding sanitary wastewater, noncontact cooling water, and boiler blowdown wastewater;
 - (2) Contributes a process wastestream which makes up five percent or more of the average dry weather hydraulic or organic capacity of the publicly owned treatment works treatment plant; or
 - (3) Is designated as a significant industrial user by the control authority on the basis that the user has a reasonable potential for adversely affecting the publicly owned treatment works operation or for violating any pretreatment standard or requirement.
 - c. Upon a finding that an industrial user which meets the criteria of subdivision b has no reasonable potential for adversely affecting the publicly owned treatment works operation or for violating any pretreatment standard or requirement, the control authority may, at any time, determine that the industrial user is not a significant industrial user.

18. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the industrial user. Upset does not include noncompliance to the extent caused by operational error, inadequate or improperly designed treatment facilities, lack of preventive maintenance, or careless or improper operation.
19. "Water management division director" means the director of the water management division of the regional office of the United States environmental protection agency or this person's delegated representative.

History: Effective October 1, 2002.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 61-28-04

33-16-01.1-02. Prohibited discharges. The following prohibitions apply to each industrial user whether or not the user is subject to other pretreatment standards or any national, state, or local pretreatment requirements:

1. An industrial user may not introduce into a publicly owned treatment works any pollutant which causes passthrough or interference.
2. The following pollutants may not be introduced into a publicly owned treatment works from any source:
 - a. Pollutants which create a fire or explosion hazard in the publicly owned treatment works, including wastestreams with a closed cup flashpoint of less than sixty degrees Celsius [140 degrees Fahrenheit] using the test methods specified in 40 Code of Federal Regulations, part 261.21, [40 CFR 261.21].
 - b. Pollutants which will cause corrosive structural damage to the publicly owned treatment works, but in no case discharges with pH lower than 5.0, unless the publicly owned treatment works is specifically designed to accommodate such discharges.
 - c. Solid or viscous pollutants in amounts which will cause obstruction to the flow in the publicly owned treatment works resulting in interference.
 - d. Any pollutant released in a discharge at a flow rate or pollutant concentration which will cause interference.
 - e. Heat in amounts which will inhibit biological activity in the publicly owned treatment works resulting in interference, but in no case heat in such quantities that the temperature at the publicly owned treatment works treatment plant exceeds forty degrees

Celsius [104 degrees Fahrenheit], unless the department, upon request of the publicly owned treatment works, approves alternate temperature limits.

- f. Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or passthrough.
- g. Pollutants which result in the presence of toxic gases, vapors, or fumes within the publicly owned treatment works in a quantity that may cause acute worker health and safety problems.
- h. Any trucked or hauled pollutants, except at discharge points designated by the publicly owned treatment works.

History: Effective October 1, 2002.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 61-28-04, 61-28-06

33-16-01.1-03. Local limits.

- 1. Each publicly owned treatment works developing an approved pretreatment program shall develop and enforce specific limits to implement the prohibitions of section 33-16-01.1-02. Each publicly owned treatment works with an approved pretreatment program shall continue to develop these limits as necessary and effectively enforce such limits.
- 2. All other publicly owned treatment works shall, if pollutants contributed by a user or users result in interference or passthrough and such violation is likely to recur, develop and enforce specific effluent limits for indirect discharges which, together with appropriate changes in the publicly owned treatment works treatment plant facilities or operation, are necessary to ensure renewed and continued compliance with the publicly owned treatment works North Dakota pollutant discharge elimination system permit or sludge use or disposal practices.
- 3. Specific limits shall not be developed and enforced without individual notice to persons or groups that have requested such notice and an opportunity to respond.
- 4. When specific prohibitions or limits on pollutants are developed by a publicly owned treatment works in accordance with this section, the limits shall be deemed pretreatment requirements.

History: Effective October 1, 2002.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 61-28-04, 61-28-06

33-16-01.1-04. Categorical pretreatment standards.

1. Industrial users shall comply with all applicable pretreatment standards.
2. Section 33-16-01-31 contains national pretreatment standards which specify quantities or concentrations of pollutants which may be discharged to a publicly owned treatment works by existing or new industrial users in specific industrial categories. Industrial users are subject to all applicable effluent guidelines and standards.
3. The 40 Code of Federal Regulations, part 403.6(a), category determination request, [40 CFR 403.6(a)] is incorporated into this chapter by reference.
4. Categorical industrial users shall comply with the following deadlines for compliance with categorical pretreatment standards:
 - a. Compliance by existing sources with categorical pretreatment standards shall be within three years of the date the standard is effective, unless a shorter compliance time is specified in the specific standard.
 - b. New sources shall have all pollution control equipment required to meet applicable pretreatment standards installed and operational before beginning to discharge. Within the shortest feasible time, but within ninety days, new sources shall meet all applicable pretreatment standards.
 - c. An existing source which becomes an industrial user after the promulgation of an applicable categorical pretreatment standard shall be considered an existing industrial user, unless the existing source is a new source.
5. The 40 Code of Federal Regulations, part 403.6(c), concentration and mass limits, [40 CFR 403.6(c)] is incorporated into this chapter by reference.
6. Except when expressly authorized to do so by an applicable pretreatment standard or pretreatment requirement, an industrial user may not increase the use of process water, or in any other way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a pretreatment standard or pretreatment requirement. The control authority may impose mass limitations on industrial users which are using dilution to meet applicable pretreatment standards or pretreatment requirements, or in other cases when the imposition of mass limitations is appropriate.
7. The 40 Code of Federal Regulations, part 403.6(e), combined wastestream formula, [40 CFR 403.6(e)] is incorporated into this

chapter by reference. When wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or wastewater from another regulated process, the effluent from the equalization facility shall meet the adjusted pretreatment limit or limits calculated using the combined wastestream formula.

History: Effective October 1, 2002.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 23-01-04.1, 61-28-04

33-16-01.1-05. Publicly owned treatment works pretreatment programs.

1. The following publicly owned treatment works shall develop and submit for department approval a pretreatment program within one year after receiving notice that program development is required:
 - a. Any publicly owned treatment works with a total design flow of greater than five million gallons [18927058 liters] per day that receives from any industrial user pollutants which pass through or interfere with the treatment process or are otherwise subject to pretreatment standards.
 - b. Any other publicly owned treatment works for which the department determines a pretreatment program is warranted.
2. Upon development or modification of a pretreatment program, the publicly owned treatment works North Dakota pollutant discharge elimination system permit shall be modified to incorporate the approved or modified program conditions as enforceable conditions of the North Dakota pollutant discharge elimination system permit.

History: Effective October 1, 2002.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 61-28-04

33-16-01.1-06. Publicly owned treatment works pretreatment program requirements.

1. Each publicly owned treatment works pretreatment program shall satisfy the program element requirements described in appendix A.
2. The publicly owned treatment works may request conditional approval of the pretreatment program pending the acquisition of funding and personnel for certain elements of the program. The publicly owned treatment works shall describe in the submission the mechanism by which the funding will be acquired. The request for conditional approval must satisfy the requirements of section 33-16-01.1-07, except that the requirements may be relaxed if the submission demonstrates that:

- a. A limited aspect of the program does not need to be implemented immediately;
 - b. The publicly owned treatment works has adequate legal authority and procedures to carry out those aspects of the program which will not be implemented immediately; and
 - c. Funding and personnel for the program aspects to be implemented at a later date will be available when needed.
3. Upon receipt of a request for conditional approval, the department will establish a fixed date for the acquisition of the needed funding and personnel. If funding is not acquired by this date, the conditional approval of the pretreatment program and any removal allowances granted to the publicly owned treatment works may be modified or withdrawn.

History: Effective October 1, 2002.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 61-28-04

33-16-01.1-07. Publicly owned treatment works pretreatment program submission packages. The submission package for publicly owned treatment works pretreatment program approval shall include each of the items described in appendix B. Three copies of the submission package shall be submitted to the department as a formal request for approval.

History: Effective October 1, 2002.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 61-28-04

33-16-01.1-08. Approval process for publicly owned treatment works pretreatment programs and requests for authority to grant removal credits.

1. Within sixty days after receiving a request for publicly owned treatment works pretreatment program approval or a request for authority to grant removal credits, the department shall make a preliminary determination of whether the submission is complete.
2. If the submission is determined to be incomplete, the department shall notify the publicly owned treatment works and each person who has requested individual notice, in writing, of the defects identified and of the means by which the publicly owned treatment works can amend its submission package.
3. If the submission is determined to be complete, the department shall:
 - a. Notify the publicly owned treatment works that the submission has been received and is under review;

- b. Commence public notice activities as prescribed in sections 33-16-01.1-09 and 33-16-01.1-10; and
 - c. Evaluate the submission for compliance with applicable requirements.
4. The department shall have ninety days from the date of public notice of any complete submission to review the submission to determine compliance with the applicable requirements of sections 33-16-01.1-05 and 33-16-01.1-14 and appendix A. The department may have up to an additional ninety days to complete the evaluation if the public comment period is extended beyond thirty days or if a public hearing or public meeting is held. The evaluation period for any submission shall not exceed a total of one hundred eighty days from the date of public notice of any complete submission.
 5. Departmental procedures shall allow the transmittal of such documents and data to and from the environmental protection agency and to other appropriate governmental agencies as may be necessary.
 6. After the public comment period has ended, and prior to the deadline contained in subsection 4, the department shall approve or deny the submission based upon departmental evaluation and consideration of any comments received.
 7. If the submission is denied, the department shall notify the publicly owned treatment works and each person who requested individual notice. The notification shall include suggested modifications and the department may allow the publicly owned treatment works additional time to bring the submission into compliance with applicable requirements.
 8. No publicly owned treatment works pretreatment program or request for authorization to grant removal credit allowances shall be approved if, following the public notice period and any hearing or meeting held pursuant to section 33-16-01.1-09, the regional administrator sets forth in writing objections to the approval and the reasons for the objection. A copy of the regional administrator's objections shall be provided to the applicant and each person who has requested individual notice. The regional administrator shall provide an opportunity for written comments and may convene a public hearing on the objections. Unless retracted, the regional administrator's objections shall constitute a final ruling to deny approval of a publicly owned treatment works pretreatment program or authorization to grant removal allowances ninety days after the date the objections are issued.
 9. The department shall provide notice of the decision by:

- a. Notifying those persons who submitted comments and participated in the public hearing or public meeting, if held; and
 - b. Causing to be published a notice of approval or disapproval in the same newspapers as the original notice of request for submission approval was published. The notice shall identify any removal credit authority which was granted as part of the pretreatment program approval.
10. The submission and any comments upon such submission shall be available to the public for inspection and copying.

History: Effective October 1, 2002.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 61-28-04

33-16-01.1-09. Public notice.

1. Within twenty days of determining that a submission for publicly owned treatment works pretreatment program approval or removal credit authorization is complete, the department shall issue a public notice of request for approval of the submission.
2. The public notice shall be circulated in a manner designed to inform interested persons of the submission. Procedures for the circulation of public notice shall include at least the following:
 - a. Notice shall be mailed to state and federal fish, shellfish, and wildlife agencies, unless such agencies have asked not to be sent the notices.
 - b. Notice shall be mailed to any other person or group that has requested individual notice, including those on appropriate mailing lists.
 - c. Notice shall be published in local newspapers and periodicals or, if appropriate, in a daily newspaper of general circulation.
3. The public notice shall provide a period of not less than thirty days following the date of the public notice during which time interested persons may submit their written views on the submission. All written comments submitted during the public comment period shall be retained by the department and shall be considered in the decision on whether to approve the submission.

History: Effective October 1, 2002.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 61-28-04

33-16-01.1-10. Opportunity for hearing.

1. An applicant for publicly owned treatment works pretreatment program approval or removal credit authorization, affected state, interested state agency or federal agency, or interested person or group of persons may request a public hearing or public meeting with respect to the submission.
2. The request for public hearing or public meeting shall be filed within the public comment period specified in the public notice pursuant to section 33-16-01.1-09 and shall indicate the interest of the person filing the request and the reasons why a hearing or meeting is warranted.
3. The department shall hold a hearing or meeting if the publicly owned treatment works so requests. In addition, a hearing or meeting shall be held if there is significant public interest in issues relating to whether or not the submission should be approved.
4. The department shall publish notice of a hearing or meeting to consider a submission in the same newspaper or newspapers as the notice of the original request for publicly owned treatment works pretreatment program approval or removal credit authorization. In addition, notice of the hearing or meeting shall be sent to those persons requesting individual notice. The notice shall inform interested parties of the nature of the hearing or meeting and the right to participate.

History: Effective October 1, 2002.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 61-28-04

33-16-01.1-11. General monitoring and reporting requirements.

1. Publicly owned treatment works which are required to develop a pretreatment program and industrial users which are subject to pretreatment standards shall install, calibrate, use, and maintain the monitoring equipment or methods, including if appropriate, biological monitoring methods, necessary to determine continued compliance with pretreatment standards and requirements.
2. All reports submitted by a user or publicly owned treatment works shall conform to the signatory requirements of section 33-16-01-05.
3. In addition to the requirements of sections 33-16-01.1-12 and 33-16-01.1-13, industrial users and publicly owned treatment works shall submit any other information and reports required under the North Dakota pollutant discharge elimination system or pretreatment regulation or under state law.

4. All information submitted to the state or publicly owned treatment works shall be available to the public at least to the extent provided by 40 Code of Federal Regulations, part 2.302, [40 CFR 2.302]. Monitoring data and other such data as is necessary to determine whether a user is in compliance with applicable pretreatment standards shall be available to the public without restriction.
5. All records of monitoring activity pursuant to sections 33-16-01.1-12 and 33-16-01.1-13 shall conform to the requirements of section 33-16-01-22. The monitoring record shall also include the sampling methods used. The period of retention shall be extended during the course of any unresolved litigation regarding an indirect discharge or the operations of the publicly owned treatment works pretreatment program, or when requested by the department or the administrator of the environmental protection agency. Such records shall be made available for inspection and copying for a reasonable fee by the department and the regional administrator.
6. Any publicly owned treatment works to which reports are submitted by industrial users pursuant to section 33-16-01.1-12 shall make such reports available for inspection and copying by the department and the regional administrator. The publicly owned treatment works shall retain such reports for a minimum of three years. The retention period shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the industrial user or the operation of the publicly owned treatment works pretreatment program, or when requested by the department or the administrator of the environmental protection agency.

History: Effective October 1, 2002.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 61-28-04

33-16-01.1-12. Industrial user monitoring and reporting requirements.

1. Each categorical industrial user shall submit a complete baseline monitoring report to the control authority.
 - a. The baseline monitoring report shall be submitted on the appropriate baseline monitoring reporting form, which can be obtained from the department.
 - b. For existing industrial users, the report shall be due one hundred eighty days after the effective date of the applicable categorical pretreatment standard or the final administrative decision made upon a category determination submission, whichever is later.
 - c. For new sources and sources that become industrial users after the promulgation of an applicable categorical pretreatment standard,

the report shall be due ninety days prior to the commencement of the indirect discharge.

2. If a baseline monitoring report contains a compliance schedule for meeting categorical pretreatment standards, the industrial user shall submit compliance schedule progress reports to the control authority.
 - a. Each compliance schedule progress report shall be due fourteen days after the applicable progress date in the compliance schedule.
 - b. Each compliance schedule progress report shall include:
 - (1) A statement whether the user achieved the scheduled action on the applicable date; and
 - (2) If the user has not achieved the scheduled action, the date on which the user expects to achieve the action, the reason for delay, and the steps being taken to return the construction to the established schedule.
 - c. In no case shall more than nine months elapse between compliance schedule progress report submittals.
3. Each categorical industrial user shall submit to the control authority a complete ninety-day compliance report for each applicable pretreatment standard.
 - a. Each ninety-day compliance report shall be submitted on a ninety-day compliance reporting form, which can be obtained from the department.
 - b. For existing industrial users, each report shall be due ninety days after the date for final compliance with the applicable categorical pretreatment standard.
 - c. For new sources and sources that become industrial users after the date for final compliance with the applicable categorical pretreatment standard, each report shall be due thirty days after commencement of the indirect discharge.
4. Each categorical industrial user shall submit complete periodic compliance reports to the control authority.
 - a. Periodic compliance reports submitted to the department shall be submitted on a periodic compliance reporting form, which will be supplied to the user by the department. If the publicly owned treatment works is the control authority, periodic compliance

reports shall require, at a minimum, the data listed in 40 Code of Federal Regulations, part 403.12(e) and part 403.12(g).

- b. Periodic compliance reports shall be submitted in accordance with a reporting schedule prescribed by the control authority. Reporting schedules shall be consistent with any applicable pretreatment standard requirements. In no case shall the reporting frequency be less than twice per year.
5. Each industrial user shall notify the publicly owned treatment works immediately of all discharges that could cause problems to the publicly owned treatment works, including any slug loadings.
6. The 40 Code of Federal Regulations, part 403.12(p), [40 CFR 403.12(p)], which concerns hazardous waste notification, is incorporated into this chapter by reference.
7. All industrial users shall promptly notify the control authority and the publicly owned treatment works in advance of any substantial change in the volume or characteristic of pollutants in their discharge, including the listed or characteristic hazardous wastes for which the user has submitted initial notification under subsection 6.
8. The indirect discharge from each industrial user shall be sampled and analyzed in accordance with a monitoring schedule prescribed by the control authority. The monitoring schedule shall be adequate to allow assessment of the indirect discharge. All analyses shall be performed in accordance with the procedures contained in 40 Code of Federal Regulations, part 136, [40 CFR 136] or with any other test procedure approved by the administrator of the environmental protection agency.
9. Each noncategorical significant industrial user of a publicly owned treatment works which administers an approved pretreatment program shall submit to the publicly owned treatment works, at least semiannually, on dates specified by the publicly owned treatment works, a description of the discharge, including self-monitoring results as required by the publicly owned treatment works.

History: Effective October 1, 2002.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 61-28-04

33-16-01.1-13. Publicly owned treatment works reporting requirements.

1. Publicly owned treatment works with approved pretreatment programs shall submit to the department on an annual basis a report describing the program activities. Reports shall be due March twenty-eighth. Each report shall include, at a minimum:

- a. An updated list of the publicly owned treatment works industrial users, including the name and address of each user, and identifying the categorical standards applicable to each user. The list shall indicate which users are subject to local standards that are more stringent than the categorical pretreatment standards and shall also include users that are subject only to local requirements. The publicly owned treatment works shall provide an explanation for each deletion from the previous list;
 - b. A summary of the status of industrial user compliance over the reporting period;
 - c. A summary of compliance and enforcement activities, including inspections, conducted by the publicly owned treatment works during the reporting period;
 - d. A summary of changes to the publicly owned treatment works pretreatment program that have not been previously reported to the department; and
 - e. Any other relevant information requested by the department.
2. If a publicly owned treatment works is under a compliance schedule for pretreatment program development, the publicly owned treatment works shall submit compliance schedule progress reports to the department.
 - a. Each compliance schedule progress report shall be due fourteen days after the applicable progress date in the compliance schedule.
 - b. Each compliance schedule progress report shall include:
 - (1) A statement whether the publicly owned treatment works achieved the scheduled action on the applicable date; and
 - (2) If the publicly owned treatment works has not achieved the scheduled action, the date on which the publicly owned treatment works expects to achieve the action, the reason for delay, and the steps being taken to return to the established schedule.
 - c. In no case shall more than nine months elapse between compliance schedule progress report submittals.

History: Effective October 1, 2002.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 61-28-04

33-16-01.1-14. Removal credits.

1. The 40 Code of Federal Regulations, part 403.7, removal credits, [40 CFR 403.7] is incorporated into this chapter by reference.
2. Appendix G to 40 Code of Federal Regulations, part 403, pollutants eligible for a removal credit, [appendix G to 40 CFR 403] is incorporated into this chapter by reference.
3. The department shall utilize the procedure prescribed in section 33-16-01.1-08 to evaluate and approve or deny requests for authority to grant removal credits.

History: Effective October 1, 2002.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 23-01-04.1, 61-28-04

33-16-01.1-15. Variances from categorical pretreatment standards for fundamentally different factors. The 40 Code of Federal Regulations, part 403.13, variances from categorical pretreatment standards for fundamentally different factors, [40 CFR 403.13] is incorporated into this chapter by reference.

History: Effective October 1, 2002.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 23-01-04.1, 61-28-04

33-16-01.1-16. Net/gross adjustments. The 40 Code of Federal Regulations, part 403.15, net/gross calculation, [40 CFR 403.15] is incorporated into this chapter by reference.

History: Effective October 1, 2002.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 23-01-04.1, 61-28-04

33-16-01.1-17. Upset.

1. An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the following criteria are demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence:
 - a. An upset occurred and the user can identify the cause or causes;
 - b. The facility was at the time being operated in a prudent and professional manner and in compliance with applicable operation and maintenance procedures; and
 - c. The user has submitted the following information to the publicly owned treatment works and to the control authority within

twenty-four hours of becoming aware of the upset. If the information is submitted orally, a written submission shall be provided within five days:

- (1) A description of the indirect discharge and the cause of noncompliance;
 - (2) The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and
 - (3) Steps being taken or being planned to reduce, eliminate, and prevent recurrence of the noncompliance.
2. In any enforcement proceeding the industrial user seeking to establish the occurrence of an upset shall have the burden of proof.
 3. No determination made during administrative review of claims that noncompliance with categorical pretreatment standards was caused by upset, is final administrative action.
 4. The industrial user shall control production or all indirect discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided.

History: Effective October 1, 2002.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 61-28-04, 61-28-07

33-16-01.1-18. Bypass.

1. An industrial user may allow any bypass to occur which does not cause pretreatment standards or pretreatment requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. Such bypasses are not subject to subsections 2 and 3.
2. The industrial user shall provide notification to the control authority of a bypass under the following circumstances:
 - a. If the user knows in advance of the need for a bypass, prior notice shall be submitted, at least ten days before the date of the bypass, if possible.
 - b. The user shall submit oral notice of an unanticipated bypass that exceeds applicable pretreatment standards within twenty-four hours from the time the user becomes aware of the bypass. A written submission shall also be provided within five days of the

time the user becomes aware of the bypass. The control authority may waive the written report on a case-by-case basis if the oral report has been received within twenty-four hours.

- c. The written submission shall contain the following items:
 - (1) A description of the bypass and its cause;
 - (2) The duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and
 - (3) The steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass.
- 3. Bypasses are prohibited unless the following conditions are met. The control authority may approve an anticipated bypass, if the following conditions are met:
 - a. The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - b. There were no feasible alternatives to the bypass. This condition is not satisfied if adequate backup equipment was not installed to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
 - c. The user submitted the notification required in subsection 2.

History: Effective October 1, 2002.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 61-28-04

33-16-01.1-19. Pretreatment program modifications. The 40 Code of Federal Regulations, part 403.18, modification of publicly owned treatment works pretreatment programs, [40 CFR 403.18] is incorporated into this chapter by reference.

History: Effective October 1, 2002.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 23-01-04.1, 61-28-04

33-16-01.1-20. Right of entry.

- 1. Each publicly owned treatment works and industrial user shall permit an authorized representative of the department, upon presentation of the representative's credentials:

- a. To enter the premises of a publicly owned treatment works or of an industrial user of a publicly owned treatment works in which an effluent source is located or in which any records are maintained;
 - b. To have access to and copy any records required to be maintained;
 - c. To inspect any monitoring equipment or method which is required; and
 - d. To have access to and sample any discharge of pollutants to waters of the state or to a publicly owned treatment works which result from the activities or operation of the publicly owned treatment works or industrial user.
2. An industrial user of a publicly owned treatment works with an approved pretreatment program shall permit an authorized representative of the publicly owned treatment works, upon presentation of the representative's credentials, the access detailed in subsection 1.

History: Effective October 1, 2002.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 61-28-04

33-16-01.1-21. Enforcement. The department shall evaluate all reports, notifications, and data submitted to or obtained by the department in compliance with this chapter and shall investigate and follow up all apparent violations for possible enforcement action pursuant to North Dakota Century Code section 61-28-08.

History: Effective October 1, 2002.

General Authority: NDCC 61-28-04, 61-28-05

Law Implemented: NDCC 61-28-04, 61-28-08

APPENDIX A

REQUIRED POTWs PRETREATMENT PROGRAM ELEMENTS

Legal authority. The publicly owned treatment works (POTWs) shall operate pursuant to legal authority enforceable in federal, state, or local courts, which authorizes or enables the POTWs to apply and to enforce the requirements of sections 307(b) and (c), and 402(b)(8) of the Federal Water Pollution Control Act and any regulations implementing those sections. Such authority may be contained in a statute, ordinance, joint powers agreements, or similar mechanisms which the POTWs is authorized to enact, enter into, or implement, and which are authorized by state law. At a minimum, this legal authority shall enable the POTWs to accomplish each of the following actions:

1. Deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTWs by industrial users if such contributions do not meet applicable pretreatment standards and requirements or if such contributions would cause the POTWs to violate its NDPDES permit.
2. Require compliance with applicable pretreatment standards and requirements by industrial users.
3. Control through permit, order, or similar means the contribution to the POTWs by each industrial user to ensure compliance with applicable pretreatment standards and requirements. In the case of significant industrial users, this control shall be achieved through permits or equivalent individual control mechanisms issued to each such user. Such control mechanisms must be enforceable and contain, at a minimum, the following conditions:
 - a. Statement of duration (in no case more than five years);
 - b. Statement of nontransferability without, at a minimum, prior notification to the POTWs and provision of a copy of the existing control mechanism to the new owner or operator;
 - c. Effluent limits based on applicable general pretreatment standards in chapter 33-16-01.1, categorical pretreatment standards, local limits, and state and local law;
 - d. Self-monitoring, sampling, reporting, notification, and recordkeeping requirements, including an identification of the pollutants to be monitored, sampling location, sampling frequency, and sample type, based on the applicable general pretreatment standards in chapter 33-16-01.1, categorical pretreatment standards, local limits, and state and local law; and
 - e. Statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable

compliance schedule. Such schedules may not extend the compliance date beyond applicable federal deadlines.

4. Require:

- a. The development of a compliance schedule by each industrial user for the installation of technology required to meet applicable pretreatment standards and requirements; and
 - b. The submissions of all notices and self-monitoring reports from industrial users as are necessary to assess and assure their compliance with pretreatment standards and requirements, including the reports required in section 33-16-01.1-12.
5. Carry out all inspection, surveillance, and monitoring procedures necessary to determine, independent of information supplied by industrial users, compliance or noncompliance with applicable pretreatment standards and requirements by industrial users. Representatives of the POTWs shall be authorized to enter any premises of any industrial user in which a discharge source or treatment system is located or in which records are required to be kept under subsection 5 of section 33-16-01.1-11 to assure compliance with pretreatment standards and requirements. Such authority shall be at least as extensive as the authority provided under section 308 of the Federal Water Pollution Control Act.
6. a. Obtain remedies for noncompliance by any industrial user with any pretreatment standards and requirements. All POTWs shall be able to seek injunctive relief for noncompliance by industrial users with pretreatment standards and requirements. All POTWs shall also have authority to seek or assess civil or criminal penalties in at least the amount of one thousand dollars a day for each violation by industrial users of pretreatment standards and requirements.
 - b. Pretreatment standards and requirements which will be enforced through these remedies will include the duty to allow or carry out inspections, entry, or monitoring activities; any rules, regulations, or orders issued by the POTWs; any requirements set forth in individual control mechanisms issued by the POTWs; or any reporting requirements imposed by the POTWs or state or federal regulations. The POTWs shall have authority and procedures after informal notice to the discharger immediately and effectively to halt or prevent any discharge of pollutants to the POTWs which reasonably appears to present an imminent endangerment to the health or welfare of persons. The POTWs shall also have authority and procedures which shall include notice to the affected industrial users and an opportunity to respond to halt or prevent any discharge to the POTWs which presents or may present an

endangerment to the environment or which threatens to interfere with the operation of the POTWs.

7. Comply with the confidentiality requirements set forth in subsection 4 of section 33-16-01.1-11.

Procedures. The POTWs shall develop and implement procedures to ensure compliance with the requirements of a pretreatment program. At a minimum, these procedures shall enable the POTWs to accomplish each of the following actions:

1. Identify and locate all possible industrial users which might be subject to the POTWs pretreatment program. Any compilation, index, or inventory of industrial users made under this subsection shall be made available to the department or regional administrator upon request.
2. Identify the character and volume of pollutants contributed to the POTWs by the industrial users which are subject to the POTWs pretreatment program. This information shall be made available to the department or regional administrator upon request.
3. Notify industrial users which are subject to the POTWs pretreatment program of applicable pretreatment standards and any applicable requirements under sections 204(b) and 405 of the Federal Water Pollution Control Act and subtitles C and D of the Resource Conservation and Recovery Act. Within thirty days of departmental approval of a significant industrial user's list (see "*Significant industrial users*"), notify each significant industrial user of its status as such and of all requirements applicable to it as a result of such status.
4. Receive and analyze self-monitoring reports and other notices submitted by industrial users in accordance with the self-monitoring requirements in section 33-16-01.1-12.
5. Randomly sample and analyze the effluent from industrial users and conduct surveillance activities in order to identify, independent of information supplied by industrial users, occasional and continuing noncompliance with pretreatment standards. Inspect and sample the effluent from each significant industrial user at least once a year. Evaluate, at least once every two years, whether each such significant industrial user needs a plan to control slug discharges. For purposes of this subsection, a slug discharges any discharge of a nonroutine, episodic nature, including an accidental spill or a noncustomary batch discharge. The results of such activities shall be available to the department upon request. If the POTWs decides that a slug control plan is needed, the plan shall contain, at a minimum, the following elements:
 - a. Description of discharge practices, including nonroutine batch discharges;

- b. Description of stored chemicals;
 - c. Procedures for immediately notifying the POTWs of slug discharges, including any discharge that would violate a prohibition under subsection 2 of section 33-16-01.1-02, with procedures for followup written notification within five days; and
 - d. If necessary, procedures to prevent adverse impact from accidental spills, including but not limited to inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and measures and equipment for emergency response.
6. Investigate instances of noncompliance with pretreatment standards and requirements, as indicated in the reports and notices required under section 33-16-01.1-12, or indicated by analysis, inspection, and surveillance activities. Sample taking and analysis and the collection of other information shall be performed with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions.
7. Comply with the public participation requirements of 40 Code of Federal Regulations, part 25, [40 CFR 25] in the enforcement of national pretreatment standards. These procedures shall include provision for at least annual public notification, in the largest daily newspaper published in the municipality in which the POTWs is located, of industrial users which, at any time during the previous twelve months, were in significant noncompliance with applicable pretreatment requirements. For the purposes of this provision, an industrial user is in significant noncompliance if its violation meets one or more of the following criteria:
- a. Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent or more of all of the measurements taken during a six-month period exceed by any magnitude the daily maximum limit or the average limit for the same pollutant parameter;
 - b. Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC=1.4 for five-day biochemical oxygen demand, total suspended solids, fats, oil, and grease, and 1.2 for all other pollutants except pH);
 - c. Any other violation of a pretreatment effluent limit (daily maximum or longer-term average) that the control authority determines

has caused, alone or in combination with other discharges, interference, or passthrough (including endangering the health of POTWs personnel or the general public);

- d. Any discharge of a pollutant that has caused imminent endangerment to human health, welfare, or to the environment or has resulted in the POTWs exercise of its emergency authority to halt or prevent such a discharge;
- e. Failure to meet, within ninety days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;
- f. Failure to provide, within thirty days after the due date, required reports such as baseline monitoring reports, ninety-day compliance reports, periodic self-monitoring reports, and compliance schedule progress reports;
- g. Failure to accurately report noncompliance; or
- h. Any other violation or group of violations which the control authority determines will adversely affect the operation or implementation of the local pretreatment program.

Funding. The POTWs shall have sufficient resources and qualified personnel to carry out the authorities and procedures described in "*Legal authority*" and "*Procedures*." In some limited circumstances, funding and personnel may be delayed when the POTWs has adequate legal authority and procedures to carry out these pretreatment program requirements, and a limited aspect of the pretreatment program does not need to be implemented immediately (see subsection 2 of section 33-16-01.1-06).

Local limits. The POTWs shall develop local limits as required in section 33-16-01.1-03 or demonstrate that they are not necessary.

Enforcement response plan. The POTWs shall develop and implement an enforcement response plan. This plan shall contain detailed procedures indicating how a POTWs will investigate and respond to instances of an industrial user noncompliance. The plan shall, at a minimum:

- 1. Describe how the POTWs will investigate the instances of noncompliance;
- 2. Describe the types of escalating enforcement responses the POTWs will take in response to all anticipated types of industrial user violations and the time periods within which responses will take place;

3. Identify (by title) the official(s) responsible for each type of response; and
4. Adequately reflect the POTWs primary responsibility to enforce all applicable pretreatment requirements and standards, as detailed in "*Legal authority*" and "*Procedures.*"

Significant industrial users. The POTWs shall prepare a list of its significant industrial users. The list shall identify the criteria in subsection 17 of section 33-16-01.1-01 applicable to each industrial user and, for industrial users meeting the criteria in subdivision b of subsection 17 of section 33-16-01.1-01, shall also indicate whether the POTWs has made a determination pursuant to subdivision c of subsection 17 of section 33-16-01.1-01 that such industrial user should not be considered a significant industrial user. The initial list shall be submitted to the department as a nonsubstantial modification pursuant to section 33-16-01.1-19. Modifications to the list shall be submitted to the department pursuant to subdivision a of subsection 1 of section 33-16-01.1-13.

APPENDIX B

POTWs PRETREATMENT PROGRAM SUBMISSION PACKAGES

A POTWs requesting approval of a POTWs pretreatment program shall develop a program description, which includes the following information:

A statement from the city solicitor or a city official acting in a comparable capacity (or the attorney for those POTWs which have independent legal counsel) that the POTWs has authority adequate to carry out the programs described in Appendix A. This statement shall:

1. Identify the provision of legal authority which provides the basis for each procedure described in "*Procedures*" in Appendix A;
2. Identify the manner in which the POTWs will implement the program requirements set forth in Appendix A, including the means by which pretreatment standards will be applied to individual industrial users (e.g., by order, permit, ordinance, etc.); and
3. Identify how the POTWs intends to ensure compliance with pretreatment standards and requirements, and to enforce them in the event of noncompliance by industrial users.

A copy of any statutes, ordinances, regulations, agreements, or other authorities relied upon by the POTWs for its administration of the program. This submission shall include a statement reflecting the endorsement or approval of the local boards or bodies responsible for supervising or funding the POTWs pretreatment program, or both, if approved;

A brief description, including organization charts, of the POTWs organization which will administer the pretreatment program. If more than one agency is responsible for administration of the program, the responsible agencies should be identified, their respective responsibilities delineated, and their procedures for coordination set forth; and

A description of the funding levels and full-time and part-time manpower available to implement the program.